

- (1) The Appeals Board has jurisdiction to review these preliminary hearing findings under K.S.A. 44-534a. The issues of whether an employee has sustained an accidental

injury or whether the injury arose out of and in the course of the employee's employment are specifically designated jurisdictional issues in that statute.

(2) Claimant testified she worked in violation of her permanent restriction relating to overhead work and began to experience additional symptomatology during the period beginning September 2, 1994. Claimant also introduced the medical report of Pedro Murati, M.D., that indicates claimant now has rotator cuff strain in the left shoulder and myofascial pain syndrome, both being new diagnoses. Although Dr. Poole's records indicate claimant has not sustained a new injury, they do indicate claimant's symptoms are a continuation of a prior injury.

The Appeals Board finds the claimant has established, for preliminary hearing purposes, that it is more probably true than not that she sustained personal injury by accident arising out of and in the course of her employment with the respondent during the period alleged. The Preliminary Hearing Order of the Administrative Law Judge should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated June 1, 1995, should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of August, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Joseph Seiwert, Wichita, Kansas
Eric K. Kuhn, Wichita, Kansas
Steven L. Foulston, Wichita, Kansas
John D. Clark, Administrative Law Judge
Philip S. Harness, Director